

111TH CONGRESS
1ST SESSION

S. 997

To amend the Internal Revenue Code of 1986 to provide income tax relief for families, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2009

Mrs. LINCOLN (for herself and Ms. SNOWE) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide income tax relief for families, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENTS TO 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Family Tax Relief Act of 2009”.

6 (b) AMENDMENTS TO 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
 2 sion of the Internal Revenue Code of 1986.

3 **SEC. 2. EXPANSION OF DEPENDENT CARE CREDIT.**

4 (a) IN GENERAL.—Subpart C of part IV of sub-
 5 chapter A of chapter 1 (relating to refundable credits) is
 6 amended by inserting after section 36A the following new
 7 section:

8 **“SEC. 36B. EXPENSES FOR HOUSEHOLD AND DEPENDENT**
 9 **CARE SERVICES NECESSARY FOR GAINFUL**
 10 **EMPLOYMENT.**

11 “(a) ALLOWANCE OF CREDIT.—

12 “(1) IN GENERAL.—In the case of an individual
 13 for which there are 1 or more qualifying individuals
 14 (as defined in subsection (b)(1)) with respect to such
 15 individual, there shall be allowed as a credit against
 16 the tax imposed by this subtitle for the taxable year
 17 an amount equal to the applicable percentage of the
 18 employment-related expenses (as defined in sub-
 19 section (b)(2)) paid by such individual during the
 20 taxable year.

21 “(2) APPLICABLE PERCENTAGE DEFINED.—For
 22 purposes of paragraph (1), the term ‘applicable per-
 23 centage’ means 50 percent reduced (but not below
 24 20 percent) by 1 percentage point for each \$1,000
 25 (or fraction thereof) by which the taxpayer’s ad-

1 justed gross income for the taxable year exceeds
2 \$30,000.

3 “(b) DEFINITIONS OF QUALIFYING INDIVIDUAL AND
4 EMPLOYMENT-RELATED EXPENSES.—For purposes of
5 this section—

6 “(1) QUALIFYING INDIVIDUAL.—The term
7 ‘qualifying individual’ means—

8 “(A) a dependent of the taxpayer (as de-
9 fined in section 152(a)(1)) who has not attained
10 age 13,

11 “(B) a dependent of the taxpayer (as de-
12 fined in section 152, determined without regard
13 to subsections (b)(1), (b)(2), and (d)(1)(B))
14 who is physically or mentally incapable of car-
15 ing for himself or herself and who has the same
16 principal place of abode as the taxpayer for
17 more than one-half of such taxable year, or

18 “(C) the spouse of the taxpayer, if the
19 spouse is physically or mentally incapable of
20 caring for himself or herself and has the same
21 principal place of abode as the taxpayer for
22 more than one-half of such taxable year.

23 “(2) EMPLOYMENT-RELATED EXPENSES.—

24 “(A) IN GENERAL.—The term ‘employ-
25 ment-related expenses’ means amounts paid for

1 the following expenses, but only if such ex-
2 penses are incurred to enable the taxpayer to be
3 gainfully employed for any period for which
4 there are 1 or more qualifying individuals with
5 respect to the taxpayer:

6 “(i) Expenses for household services.

7 “(ii) Expenses for the care of a quali-
8 fying individual.

9 Such term shall not include any amount paid
10 for services outside the taxpayer’s household at
11 a camp where the qualifying individual stays
12 overnight.

13 “(B) EXCEPTION.—Employment-related
14 expenses described in subparagraph (A) which
15 are incurred for services outside the taxpayer’s
16 household shall be taken into account only if in-
17 curred for the care of—

18 “(i) a qualifying individual described
19 in paragraph (1)(A), or

20 “(ii) a qualifying individual (not de-
21 scribed in paragraph (1)(A)) who regularly
22 spends at least 8 hours each day in the
23 taxpayer’s household.

24 “(C) DEPENDENT CARE CENTERS.—Em-
25 ployment-related expenses described in subpara-

1 graph (A) which are incurred for services pro-
 2 vided outside the taxpayer's household by a de-
 3 pendent care center (as defined in subpara-
 4 graph (D)) shall be taken into account only if—

5 “(i) such center complies with all ap-
 6 plicable laws and regulations of a State or
 7 unit of local government, and

8 “(ii) the requirements of subpara-
 9 graph (B) are met.

10 “(D) DEPENDENT CARE CENTER DE-
 11 FINED.—For purposes of this paragraph, the
 12 term ‘dependent care center’ means any facility
 13 which—

14 “(i) provides care for more than six
 15 individuals (other than individuals who re-
 16 side at the facility), and

17 “(ii) receives a fee, payment, or grant
 18 for providing services for any of the indi-
 19 viduals (regardless of whether such facility
 20 is operated for profit).

21 “(c) DOLLAR LIMIT ON AMOUNT CREDITABLE.—The
 22 amount of the employment-related expenses incurred dur-
 23 ing any taxable year which may be taken into account
 24 under subsection (a) shall not exceed—

1 “(1) \$5,000 if there is 1 qualifying individual
 2 with respect to the taxpayer for such taxable year,
 3 or

4 “(2) \$10,000 if there are 2 or more qualifying
 5 individuals with respect to the taxpayer for such tax-
 6 able year.

7 The amount determined under paragraph (1) or (2)
 8 (whichever is applicable) shall be reduced by the aggregate
 9 amount excludable from gross income under section 129
 10 for the taxable year.

11 “(d) EARNED INCOME LIMITATION.—

12 “(1) IN GENERAL.—Except as otherwise pro-
 13 vided in this subsection, the amount of the employ-
 14 ment-related expenses incurred during any taxable
 15 year which may be taken into account under sub-
 16 section (a) shall not exceed—

17 “(A) in the case of an individual who is
 18 not married at the close of such year, such indi-
 19 vidual’s earned income for such year, or

20 “(B) in the case of an individual who is
 21 married at the close of such year, the lesser of
 22 such individual’s earned income or the earned
 23 income of his spouse for such year.

24 “(2) SPECIAL RULE FOR SPOUSE WHO IS A
 25 STUDENT OR INCAPABLE OF CARING FOR HIM-

1 SELF.—In the case of a spouse who is a student or
 2 a qualifying individual described in subsection
 3 (b)(1)(C), for purposes of paragraph (1), such
 4 spouse shall be deemed for each month during which
 5 such spouse is a full-time student at an educational
 6 institution, or is such a qualifying individual, to be
 7 gainfully employed and to have earned income of not
 8 less than—

9 “(A) \$415 if subsection (c)(1) applies for
 10 the taxable year, or

11 “(B) \$830 if subsection (c)(2) applies for
 12 the taxable year.

13 In the case of any husband and wife, this paragraph
 14 shall apply with respect to only one spouse for any
 15 one month.

16 “(e) SPECIAL RULES.—For purposes of this sec-
 17 tion—

18 “(1) PLACE OF ABODE.—An individual shall
 19 not be treated as having the same principal place of
 20 abode as the taxpayer if at any time during the tax-
 21 able year of the taxpayer the relationship between
 22 the individual and the taxpayer is in violation of
 23 local law.

24 “(2) MARRIED COUPLES MUST FILE JOINT RE-
 25 TURN.—If the taxpayer is married at the close of

1 the taxable year, the credit shall be allowed under
 2 subsection (a) only if the taxpayer and his spouse
 3 file a joint return for the taxable year.

4 “(3) MARITAL STATUS.—An individual legally
 5 separated from his spouse under a decree of divorce
 6 or of separate maintenance shall not be considered
 7 as married.

8 “(4) CERTAIN MARRIED INDIVIDUALS LIVING
 9 APART.—If—

10 “(A) an individual who is married and who
 11 files a separate return—

12 “(i) maintains as his home a house-
 13 hold which constitutes for more than one-
 14 half of the taxable year the principal place
 15 of abode of a qualifying individual, and

16 “(ii) furnishes over half of the cost of
 17 maintaining such household during the
 18 taxable year, and

19 “(B) during the last 6 months of such tax-
 20 able year such individual’s spouse is not a mem-
 21 ber of such household,

22 such individual shall not be considered as married.

23 “(5) SPECIAL DEPENDENCY TEST IN CASE OF
 24 DIVORCED PARENTS, ETC.—If—

1 “(A) section 152(e) applies to any child
2 with respect to any calendar year, and

3 “(B) such child is under the age of 13 or
4 is physically or mentally incapable of caring for
5 himself,

6 in the case of any taxable year beginning in such
7 calendar year, such child shall be treated as a quali-
8 fying individual described in subparagraph (A) or
9 (B) of subsection (b)(1) (whichever is appropriate)
10 with respect to the custodial parent (as defined in
11 section 152(e)(3)(A)), and shall not be treated as a
12 qualifying individual with respect to the noncustodial
13 parent.

14 “(6) PAYMENTS TO RELATED INDIVIDUALS.—
15 No credit shall be allowed under subsection (a) for
16 any amount paid by the taxpayer to an individual—

17 “(A) with respect to whom, for the taxable
18 year, a deduction under section 151(c) (relating
19 to deduction for personal exemptions for de-
20 pendents) is allowable either to the taxpayer or
21 his spouse, or

22 “(B) who is a child of the taxpayer (within
23 the meaning of section 152(f)(1)) who has not
24 attained the age of 19 at the close of the tax-
25 able year.

1 For purposes of this paragraph, the term ‘taxable
2 year’ means the taxable year of the taxpayer in
3 which the service is performed.

4 “(7) STUDENT.—The term ‘student’ means an
5 individual who during each of 5 calendar months
6 during the taxable year is a full-time student at an
7 educational organization.

8 “(8) EDUCATIONAL ORGANIZATION.—The term
9 ‘educational organization’ means an educational or-
10 ganization described in section 170(b)(1)(A)(ii).

11 “(9) IDENTIFYING INFORMATION REQUIRED
12 WITH RESPECT TO SERVICE PROVIDER.—No credit
13 shall be allowed under subsection (a) for any amount
14 paid to any person unless—

15 “(A) the name, address, and taxpayer
16 identification number of such person are in-
17 cluded on the return claiming the credit, or

18 “(B) if such person is an organization de-
19 scribed in section 501(c)(3) and exempt from
20 tax under section 501(a), the name and address
21 of such person are included on the return
22 claiming the credit.

23 In the case of a failure to provide the information
24 required under the preceding sentence, the preceding
25 sentence shall not apply if it is shown that the tax-

1 payer exercised due diligence in attempting to pro-
2 vide the information so required.

3 “(10) IDENTIFYING INFORMATION REQUIRED
4 WITH RESPECT TO QUALIFYING INDIVIDUALS.—No
5 credit shall be allowed under this section with re-
6 spect to any qualifying individual unless the TIN of
7 such individual is included on the return claiming
8 the credit.

9 “(f) ADJUSTMENT FOR INFLATION.—In the case of
10 any taxable year beginning after December 31, 2009, the
11 \$30,000 amount under subsection (a)(2) and each of the
12 dollar amounts under subsection (c) shall be increased by
13 an amount equal to—

14 “(1) such dollar amount, multiplied by

15 “(2) the cost-of-living adjustment determined
16 under section 1(f)(3) for the calendar year in which
17 the taxable year begins by substituting ‘2008’ for
18 ‘1992’ in subparagraph (B) thereof.

19 If the dollar amount as adjusted under the preceding sen-
20 tence is not a multiple of \$10, such amount shall be
21 rounded to the nearest multiple of \$10.

22 “(g) REGULATIONS.—The Secretary shall prescribe
23 such regulations as may be necessary to carry out the pur-
24 poses of this section.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Subpart A of part IV of subchapter A of
2 chapter 1 of the Internal Revenue Code of 1986 is
3 amended by striking section 21.

4 (2) Section 23(f)(1) (relating to filing require-
5 ments) is amended by striking “section 21(e)” and
6 inserting “section 36B(e)”.

7 (3) Section 35(g)(6) (relating to marital status)
8 is amended by striking “section 21(e)” and inserting
9 “section 36B(e)”.

10 (4) Section 129(a)(2) (relating to limitation of
11 exclusion) is amended by striking “section 21(e)”
12 and inserting “section 36B(e)”.

13 (5) Section 129(b)(2) (relating to special rule
14 for certain spouses) is amended by striking “section
15 21(d)(2)” and inserting “section 36B(d)(2)”.

16 (6) Section 129(e)(1) (relating to dependent
17 care assistance) is amended by striking “section
18 21(b)(2)” and inserting “section 36B(b)(2)”.

19 (7) Section 213(e) (relating to exclusion of
20 amounts allowed for care of certain dependents) is
21 amended by striking “section 21” and inserting
22 “section 36B”.

23 (8) Section 6213(g)(2) (relating to mathe-
24 matical or clerical error) is amended—

1 (A) by striking “section 21” in subpara-
 2 graph (H) and inserting “section 36B”, and

3 (B) by striking “section 21, 24, or 32” in
 4 subparagraph (L) and inserting “section 24,
 5 32, or 36B”.

6 (c) CLERICAL AMENDMENTS.—

7 (1) The table of sections for subpart C of part
 8 IV of subchapter A of chapter 1 of the Internal Rev-
 9 enue Code of 1986 is amended by inserting after the
 10 item relating to section 36A the following new item:

“Sec. 36B. Expenses for household and dependent care services necessary for
 gainful employment.”.

11 (2) The table of sections for subpart A of part
 12 IV of subchapter A of chapter 1 of the Internal Rev-
 13 enue Code of 1986 is amended by striking the item
 14 relating to section 21.

15 (d) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to taxable years beginning after
 17 December 31, 2008.

18 **SEC. 3. RULES RELATING TO EMPLOYER-PROVIDED DE-**
 19 **PENDENT CARE BENEFITS.**

20 (a) EXCLUSION LIMIT.—

21 (1) IN GENERAL.—Section 129(a)(2) (relating
 22 to limitation on exclusion) is amended—

23 (A) by striking “\$5,000” and inserting
 24 “the applicable dollar limit”, and

1 (B) by striking “\$2,500” and inserting
 2 “one-half of such limit”.

3 (2) APPLICABLE DOLLAR LIMIT.—Section
 4 129(a) is amended by adding at the end the fol-
 5 lowing new paragraph:

6 “(3) APPLICABLE DOLLAR LIMIT.—For pur-
 7 poses of this subsection—

8 “(A) IN GENERAL.—The applicable dollar
 9 limit is \$7,500 (\$10,000 if dependent care as-
 10 sistance is provided under the program to 2 or
 11 more qualifying individuals of the employee).

12 “(B) COST-OF-LIVING ADJUSTMENTS.—In
 13 the case of taxable years beginning after 2009,
 14 each dollar amount under subparagraph (A)
 15 shall be increased by an amount equal to—

16 “(i) such dollar amount, multiplied by

17 “(ii) the cost-of-living adjustment de-
 18 termined under section 1(f)(3) for the cal-
 19 endar year in which the taxable year be-
 20 gins, determined by substituting ‘2008’ for
 21 ‘1992’ in subparagraph (B) thereof.

22 If any dollar amount as increased under this
 23 clause is not a multiple of \$100, such dollar
 24 amount shall be rounded to the next lowest
 25 multiple of \$100.”.

1 (b) AVERAGE BENEFITS TEST.—

2 (1) IN GENERAL.—Section 129(d)(8)(A) (relat-
3 ing to benefits) is amended—

4 (A) by striking “55 percent” and inserting
5 “60 percent”, and

6 (B) by striking “highly compensated em-
7 ployees” the second place it appears and insert-
8 ing “employees receiving benefits”.

9 (2) SALARY REDUCTION AGREEMENTS.—Sec-
10 tion 129(d)(8)(B) (relating to salary reduction
11 agreements) is amended—

12 (A) by striking “\$25,000” and inserting
13 “\$30,000”, and

14 (B) by adding at the end the following: “In
15 the case of years beginning after 2009, the
16 \$30,000 amount in the first sentence shall be
17 adjusted at the same time, and in the same
18 manner, as the applicable dollar amount is ad-
19 justed under subsection (a)(3)(B).”.

20 (c) PRINCIPAL SHAREHOLDERS OR OWNERS.—Sec-
21 tion 129(d)(4) (relating to principal shareholders and
22 owners) is amended by adding at the end the following:
23 “In the case of any failure to meet the requirements of
24 this paragraph for any year, amounts shall only be re-
25 quired by reason of the failure to be included in gross in-

1 come of the shareholders or owners who are members of
2 the class described in the preceding sentence.”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2008.

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